

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSEPH BRIAN JENSEN, SR.,

Plaintiff,

vs.

UNITED STATES OF AMERICA;
STATE OF WASHINGTON;
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES; DIVISION OF
CHILD SUPPORT; AND BENTON
COUNTY PROSECUTING
ATTORNEY,

Defendants.

No. 4-16-CV-5064-LRS

**ORDER GRANTING MOTIONS TO
DISMISS AND CLOSING FILE**

BEFORE THE COURT are three dispositive motions filed by the Defendants: Defendant United States' Motion to Dismiss for Failure to State a Cognizable Claim (ECF No. 8); Benton County's Motion to Dismiss for Insufficient Service of Process (ECF No. 13); and Washington State's Motion to Dismiss for Insufficient Service of Process (ECF No. 16). Plaintiff has also moved for a "Case Scheduling Order for Constitutional Challenge" (ECF No. 11).

I. PLAINTIFF'S ALLEGATIONS AND CLAIMS

1 Joseph Jensen, Sr., Plaintiff, proceeding pro se, initiated this civil rights action
2 on May 13, 2016 by filing a Complaint naming three groups of Defendants: the
3 United States; the State of Washington Department of Social and Health Service
4 (DSHS) and Division of Child Support (DCS) (together, the “State”); and the Benton
5 County Prosecutors Office¹ (the “County”). Generally, Plaintiff’s allegations relate
6 to a child support proceeding commenced by a “Mrs. Baron” against Plaintiff in a
7 Washington state court. Plaintiff claims his child support obligations and
8 enforcement actions taken to pursue amounts in arrears were fraudulently-based and
9 were obtained in deprivation of life, liberty and property and without due process.
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12 The Complaint specifically alleges that while the child support proceeding
13 was pending, Mrs. Baron was defrauding the state when she requested and was
14 approved for state assistance (“Temporary Assistance of Needy Families”) without
15 fully disclosing her resources stemming from her relationship with her fiancé. The
16 Complaint asserts that in July 2014, after the state awarded Mrs. Baron assistance,
17 the Defendant Benton County prosecuting attorney appeared in the state proceeding
18 and Plaintiff received a notice from Defendants DSHS and DCS stating that Plaintiff
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24 ¹ Plaintiff’s Complaint names Defendant “Benton County Prosecuting Attorney,”
25 “a political subdivision” (ECF No. 1 at 3). Plaintiff’s Response to the pending
26 Motions (ECF No. 19) clarifies he is not asserting an individual claim but rather a
27 claim against the Benton County Prosecuting Attorney’s *Office*.
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1 was responsible for child support “as a result of the awarding of [state] assistance to
2 Mrs. Baron.” (ECF No. 1 at 6). In November 2014, Plaintiff asserts the state court
3 ordered him to pay \$506.82 in monthly child support “from the date of the ruling
4 going forward.” Plaintiff claims that without further hearing, the state court
5 ultimately ordered the support obligation retroactive to the time of the awarding of
6 state assistance to Mrs. Baron, after the prosecutor brought to the commissioner’s
7 attention the “state interest because of the awarding of assistance.” Plaintiff then
8 received notice from DSHS and DCS that he was \$2027.28 in child support arrears
9 and \$506.82 was due. Enforcement remedies were taken against Plaintiff including
10 a lien upon his real property and a garnishment on wages. In 2015, Plaintiff’s
11 support obligation increased to \$972.86 per month. The Complaint alleges that
12 Defendant DSHS refused to investigate Mrs. Baron for fraud and denied Plaintiff’s
13 request for the records of “any and all information relevant to the awarding of TANF
14 to Mrs. Baron.” (ECF No. 1 at 9). Plaintiff requested a conference review board
15 hearing “to address the fraudulent state interest,” and he alleges a decision was made
16 denying Plaintiff’s claim without being afforded the opportunity to “state his case.”
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23 Plaintiff alleges the following ten constitutional claims against all of the
24 Defendants pursuant to 42 U.S.C. § 1983 and § 1988:
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26 Count 1: Defendants violated Plaintiff’s 4th right “to be secure in his property,
27 house, papers and affects by the arbitrary instantaneous garnishment, liens and
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1 suspension of passport,” by acting pursuant to the Bradley Amendment, 42 U.S.C. §
2 666, which has “stripped...his right to parental autonomy,” and Wash Rev. Code
3 §26.18.055 and §26.18.070;
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5 Counts 2 and 3: Defendants deprived Plaintiff of due process because he was
6 not adjudicated as an unfit parent or found “purposefully noncompliant” and by
7 denying his “request for evidence that could exonerate him.”
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9 Count 4: Defendants violated Plaintiff’s “Sixth Amendment Evidentiary
10 Rights,” by denying his request for a review hearing and denying him evidence that
11 would have exonerated him.
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13 Count 5: Defendants violated the 7th Amendment in seizing his property
14 interests without a jury trial.
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16 Count 6: Defendants violated the 8th Amendment by “placing and collecting
17 a bounty on Plaintiff through an erroneous award of state assistance.
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19 Count 7: Defendants violated the Ninth Amendment in denying Plaintiff his
20 liberty and property rights.
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22 Count 8: Defendants deprived Plaintiff of equal protection in violation of the
23 14th Amendment in enacting and enforcing laws granting “greater protections and
24 entitlements” to a custodial parent.
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26 Count 9: Defendants conspired to violate Plaintiff’s rights through enacting
27 42 U.S.C. § 658a and acting to secure federal funding.
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1 Count 10: Defendants betrayed the public trust by failing to “ensure any funds
2 distributed from any social welfare program are properly awarded.” (ECF No. 1 at
3 19).
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5 The State and County have moved to dismiss based upon insufficient service
6 of process. The Proofs of Service state that Plaintiff sent the summons and
7 Complaint to the Defendants by U.S. Mail “certified mail, restricted delivery, return
8 receipt” to: Michael Ormsby, U.S. Attorney; Bob Ferguson, Attorney general of
9 Washington; Patricia Lashway, Acting Secretary of the Department of Social and
10 Health Services; Wally McClure Director of the Department’s Division of Child
11 Support; and Andy Miller, Benton County Prosecutor. (ECF No. 5).
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15 **II. ANALYSIS**

16 The United States moves this court to dismiss and for judgment on the pleadings
17 with prejudice for lack of subject matter jurisdiction, Fed.R.Civ.P. 12(b)(1), failure
18 to state a claim upon which relief can be granted, Rule 12(b)(6), and failure to state
19 a short and plain statement showing entitlement to relief, Rule 8(a). The County and
20 State Defendants motion the court for dismissal based on insufficient service of
21 process.
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24 **A. Lack of Subject Matter Jurisdiction**

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1 Federal Rule of Civil Procedure 12(b)(1) requires a court to dismiss an action
2 over which it lacks jurisdiction. The United States argues this court does not have
3 jurisdiction under the doctrine of sovereign immunity. The court agrees.
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5 Absent a waiver, sovereign immunity shields the federal government from suit.
6 *FDIC v. Meyer*, 510 U.S. 471, 475 (1994); *see also United States v. Navajo Nation*,
7 556 U.S. 287, 289 (2009) (“The Federal Government cannot be sued without its
8 consent.”). The United States cannot be sued under 42 U.S.C. § 1983 and the United
9 States is neither a “person,” nor a corporation within the meaning of the Civil Rights
10 Act, 42 U.S.C. §1983. Plaintiff erroneously cites 28 U.S.C. § 3002(15) to support
11 his assertion that the United States has no immunity in this case because it is a federal
12 corporation. Section 3002(15), a provision governing the collection of federal debt,
13 merely provides that the term “United States,” when used “*in this [statute]*,” refers
14 to “a Federal corporation; ...an agency, department, commission, board, or other
15 entity of the United States; or...an instrumentality of the United States.” *Id.* §
16 3002(15). The United States has not waived its sovereign immunity by merely
17 legislating child support policy or furnishing incentive funding to states for child
18 support enforcement. The doctrine of sovereign immunity bars all of Plaintiff’s
19 claims against the federal government and they are **DISMISSED** with prejudice.
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26 **B. Insufficient Service of Process**
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1 In order for the Court to exercise jurisdiction over a defendant, the defendant
2 must be served properly. *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co., Ltd.*, 484
3 U.S. 97, 104 (1987). Pursuant to Federal Rule of Civil Procedure 12(b)(5), a
4 defendant may move to dismiss an action based on “insufficient service of process.”
5 The sufficiency of service is assessed according to the requirements of Rule 4.
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8 Service upon a state or local government, may be accomplished by delivering a
9 copy of the summons and complaint to the organization's chief executive officer,
10 Fed.R.Civ.P. 4(j), or by serving in compliance with the law of the state where the
11 federal court is located. Fed.R.Civ.P. 4(e) (1), 4(j)(2)(B). A plaintiff, however, must
12 serve all defendants with a copy of the summons and complaint within 120 days of
13 filing a complaint or any court extensions upon a showing of good cause.
14 Fed.R.Civ.P. 4(m). If a court determines that service of process was not timely made
15 on a defendant, the court has discretion to “dismiss the action without prejudice
16 against that defendant or order that service be made within a specified time.” Rule
17 4(m).
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22 Although the United States may be served via registered or certified mail,
23 Fed.R.Civ.P. 4(i), Plaintiff’s attempt to serve the state and local government
24 Defendants by mail does not comport with the law. Regarding service upon the State,
25 service may be accomplished by delivering a copy of the summons and complaint
26 to the organization's chief executive officer, or under Wash. Rev. Code § 4.92.020,
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1 by service on the Attorney General or by leaving the summons and complaint in the
2 Office of the Attorney General with an assistant attorney general. *See Landreville v.*
3 *Shoreline Cmty. Coll. Dist. No. 7*, 53 Wash.App. 330, 766 P.2d 1107, 1108
4 (Wash.Ct.App.1989). Regarding the County, service is effectuated either by
5 delivery to its chief executive officer or “to the county auditor or, during normal
6 office hours, to the deputy auditor, or in the case of a charter county, summons may
7 be served upon the agent, if any, designated by the legislative authority.”
8 Wash.Rev.Code. §4.28.080.

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12 Plaintiff has not attempted to correct the deficient service. Instead, Plaintiff
13 contends that service by restricted delivery mail is “constitutionally sufficient,” since
14 he heard “nothing back indicating anything had gone awry.” Plaintiff has failed to
15 show good cause for untimely service. Although Plaintiff requests the opportunity
16 to perfect service, the interests of justice do not warrant an extension of time. This
17 court has an obligation to carefully review *pro se* pleadings which are subject to
18 review pursuant to the court’s inherent authority to ensure that subject matter
19 jurisdiction exists and that the case has a basis in the law. The Complaint brought
20 by Plaintiff seeking § 1983 relief against the governmental entities lacks an arguable
21 basis in law and is therefore without force or effect. It is well settled that states and
22 state agencies are not “persons” subject to suit under section 1983. In *Will v.*
23 *Michigan Dep’t of State Police*, 491 U.S. 58, 63 (1989), the United States Supreme
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1 Court held that a State is not a “person” amenable to suit under section 1983. *Id.* at
2 63. Likewise, a state agency is not a “person” subject to suit under section
3 1983. *Maldonado v. Harris*, 370 F.3d 945, 951 (9th Cir. 2004) (Caltrans, a state
4 agency, was not a person within the meaning of section 1983 and therefore not
5 amenable to suit under that statute). A county prosecutor’s office, as agents of the
6 State when performing child support enforcement functions, is not a “person” under
7 § 1983. *See e.g., Mikhael v. Santos*, 646 Fed.Appx. 158, 162 (3d. Cir. 2016); *Brown*
8 *v. Bauer*, 210 WL 421181 (W.D.Wash. Feb. 8, 2010 (unreported))(dismissing § 1983
9 claims against Cowlitz County Prosecutors Office). Moreover, the action raises
10 claims challenging the propriety of ongoing proceedings in state court and this court
11 does not have subject matter jurisdiction over challenges to state court decisions in
12 judicial proceedings. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923); *District*
13 *of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983); *see e.g., Moore*
14 *v. County of Butte*, 547 Fed. Appx. 826, 829 (9th Cir. 2013) (finding a plaintiff’s
15 claims challenging the outcome of her child custody proceedings were properly
16 dismissed); *Wu v. Levine*, 2005 WL 2340722, at *2 (E.D.N.Y. June 7, 2005) (holding
17 that where “plaintiff’s claims of constitutional and civil rights violations arise from
18 the state court proceedings,” plaintiff “cannot circumvent the Rooker-Feldman
19 doctrine by recasting her claims as a federal civil rights violation”), *aff’d*, 314
20 Fed.Appx. 376 (2d Cir. 2009).

III. CONCLUSION

IT IS HEREBY ORDERED:

1. Defendant United States' Motion to Dismiss (**ECF No. 8**) is **GRANTED**.

Plaintiff's claims against the United States are **DISMISSED** with prejudice.

2. Defendants Motions to Dismiss for Insufficient Service of Process (ECF No. 13, 16) are GRANTED. Plaintiff's claims against the County and State Defendants are **DISMISSED** without prejudice.

3. Plaintiff's Motion for Case Scheduling Order (**ECF No. 11**) is **DENIED**.

4. The Clerk of the Court shall enter Judgment of Dismissal of the Complaint (ECF No. 1) and the claims therein in accordance with this Order.

The Clerk is directed to enter this Order, enter Judgment, provide copies to the parties, and CLOSE THE FILE.

DATED this 5th day of January, 2017.

s/Lonny R. Suko

LONNY R. SUKO
SENIOR UNITED STATES DISTRICT JUDGE